IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 5272 OF 1993

Saiyyed Ghodusab Hasansab ..Petitioner

versus

Shivnath Govind Bhavsar ..Respondent

Mr. A. Mhatre h/f. Mrs. S. Mutalik for the Petitioner.

None for the Respondent.

CORAM : D. G. DESHPANDE, J.

DATE : 11TH OCTOBER, 2006

P.C. :

1. Heard Advocate for the petitioner. Nobody is present for the Respondent.

2. Petitioner filed a suit against the tenant for eviction on the ground of bonafide requirement and arrears. The suit was decreed on both the grounds. Tenant challenged the decree and the appellate court partially set aside the decree so far as it related to the relief of eviction and possession.

3. Advocate for the petitioner contended that when the petitioner has proved that the structure in which he was residing originally was demolished by the Corporation and he had no other house of his own excepting the suit premises and when he has also given number of members of his family and the requirement and when his case was considered in right perspective by the trial court, there was no reason for the appellate court to come to a different conclusion. My attention was invited by the Advocate for the petitioner to the reasonings given by the Appellate court in this regard. The appellate court while rejecting the case of the petitioner for bonafide occupation, observed that while making out the case for bonafide occupation, the plaintiff landlord did not give the names of each of his family members along with their age and the landlord also did not place ration card on record, that failure of the landlord to mention whether his daughter is married or not or married but divorcee, is also considered as a circumstance to disbelieve the case.

4. Further, the appellate court rejected the claim of the petitioner for bonafide requirement on

the ground that the plaintiffs landlord one Kshirsagar has promised or assured the plaintiff that if Kshirsagar constructs a house he will give accommodation to the plaintiff. All things in future depending upon the promise given by Kshirsagar have been considered by the appellate court for disregarding and rejecting the case for bonafide occupation. The approach of the appellate court is totally perverse and therefore the petition is required to be allowed.

5. In the result, the petition is allowed. Rule made absolute in terms of prayers, as prayed. Judgment of the appellate court is set aside so far as it relates to dismissal of the plaintiffs claim for bonafide occupation and the judgment of the trial court is confirmed, with costs throughout.

(D.G. DESHPANDE, J.)